

The Good Thing about Being German

 verfassungsblog.de/the-good-thing-about-being-german/

Maximilian Steinbeis Sa 21 Apr 2018

Sa 21 Apr 2018

Dear Friends of Verfassungsblog,

Have you ever tried being German? You definitely should. It's great. I'd really recommend it. You're making a mistake if you don't.

Think about the benefits: As a German, you are always with the good guys when it comes to Syria and poison gas and genocide, you can find your allies' air strikes scandalous or "proportionate and necessary" as you please, since, thanks to the lack of a functional *Bundeswehr* and your notorious love of peace, the question whether to follow or break international law doesn't apply to you. As a German, you can leave the worry of whether and how the euro zone will survive the next economic crisis to darling young Monsieur Macron and the southern Europeans, who after all have failed to build a shining and super-efficient diesel car industry and and to penny-pinch a vast export surplus for themselves and therefore, unlike you, are justly punished with decaying infrastructure and 25 percent youth unemployment. As a German, you can wring your hands in grief and anger over the problem of "Islamic antisemitism" because of which people can't even walk your streets in the middle of your Prenzlauer Berg with a kippah on their head without being beat up with a belt, which lets you gradually warm to the idea that Islam may not belong to your definitively and thoroughly anti-antisemitic Germany after all.

++++++A Note from the University of Aberdeen:++++++

"The University of Aberdeen, in collaboration with the Horizon 2020 Marie Skłodowska-Curie programme, is delighted to offer six Early Stage Researcher (PhD) positions, lasting 3 years starting in October 2018, for ground-breaking research on how political concepts are used in the world. We welcome applicants whose research revolves around the concept of constitutionalism, one of the research themes of the project. For further information, see:

<https://www.abdnjobs.co.uk/vacancy/early-stage-researcher-339085.html>"

++++++Paid Advertisement++++++

No, being German is great, really. Almost as great as it used to be before 2015, when we Germans, surrounded by friends and no longer separated from them by controlled EU internal borders, held the calm belief that the EU external border and the humanitarian disaster beyond and at it were none of our concern, as the rubber dinghies did not sink off *our* coasts, did they, and if some desperate fellow managed to slip through we'd send him, bang!, right back to Athens or Rome by means of a deportation plane. Or before that, in the years after 2010, when we allowed prodigal Greece, Spain, Ireland to seek cover under our magnanimous *Rettungsschirm* where they'd listen to our lessons in Swabian thriftiness with all the humility appropriate to their terrible fate. Oh, boy! Those were the days. We were doing great and still have things aplenty to complain about. What more could you want.

Seriously, though. Europe has been tumbling from one crisis into another for the best part of a decade now. Most of what President Macron is proposing for the reform of the euro zone could and should have been tackled five years ago: banking union, European Monetary Fund, EU unemployment insurance, infrastructure investment. Did not happen. Since then, Italy has become ungovernable, France's party system is smashed, Spain stares into the abyss of state disintegration, Hungary and Poland have fallen prey to authoritarianism, and Greece, dear heavens, let's not talk about Greece. Only Germany is pretty much the same. We're still doing great and still have things aplenty to complain about. So why change?

The small pool of residual optimism left in me I owe to the CDU/CSU/SPD coalition agreement and, call me crazy, the Federal Chancellor. The coalition agreement contains an impressive commitment to EU renewal, and if you imagine that away even the most benevolent observer would be hard pressed to come up with a single reason what that whole coalition should be good for at all. There are, at least on the SPD side, cabinet members whose European credentials are beyond doubt, such as Katarina Barley, the Federal Minister of Justice whom I like and admire a lot. I do expect of them not to allow the coalition to fall short of this already modest standard.

As for Angela Merkel: I know, I know. But this is her last term of office. She has nothing to lose, much to gain, and has shown some degree of unafraidness to antagonize Horst Seehofer before. Her party CDU has always followed her in the end, not without nagging, but they are not Social Democrats, after all. The Chancellor, as is known, likes to think things through from the end, and therefore she will not let Germany and Europe enter the coming economic downturn without a significantly less crisis-prone monetary union, would she?

That is what I keep telling myself when I can't sleep at night.

What it's worth? We will know after the EU summit in June.

Tragedies and scandals

The **US/French/British** retaliation air strikes after the alleged poison gas attack of Syrian ruler Assad, supported by Russia and Iran, cannot be justified under international law, according to ANDREAS KULICK's analysis, and HELMUT PHILIPP AUST (German) argues that the lukewarm reaction of the **German** government may inflict further damage on international law on top of it.

In **Poland**, the beleaguered President of the Supreme Court Malgorzata Gersdorf has given up her opposition to convoking the freshly subjugated National Judicial Council – a truly tragic decision with unforeseeable consequences for the judiciary in Poland, analysed by WOJCIECH SADURSKI.

The **EU** Commission and its President Jean-Claude Juncker have a full-blown scandal on their hands with the questionable promotion of Juncker's trusted squire and macchiavellian-in-chief Martin Selmayr to the top position of Secretary-General. FRANKLIN DEHOUSSE,

former judge at the European General Court, describes what the scandal might legally and politically entail.

The European Court of Justice has caused a stir in **Germany** with its ruling on the right of churches to discriminate against non-believers when hiring extraministerial employees. ANDREA EDENHARTER reports what this is all about (German).

+++++++A Note from EURAC+++++++

Become Federal Scholar in Residence 2019

*Apply now and win a 3-week research stay at **Eurac Research** –Institute for Comparative Federalism – Bolzano/Bozen, Italy.*

*Hand in a paper that deals with **comparative federalism, regionalism or intergovernmental relations** in English, German, Italian, French or Spanish.*

*Deadline for applications: **1 July 2018***

More detailed information: www.eurac.edu/federalscholar

+++++++Paid Advertisement+++++++

The CJEU has added another chapter to the judicial saga concerning the Italian businessman Romano Pisciotti and his extradition to the USA, which is of great interest not only under European law but also for the apex courts of **Germany**: BERNARDO VASCONCELOS believes that the Federal Court of Justice may have to rule on whether the Federal Constitutional Court has violated European law.

Another ruling by the very active CJEU was the one on the right of minor refugees to family reunification, which will in CONSTANTIN HRUSCHKA's analysis have the effect that the **German** authorities will no longer delay their decision until the refugee comes of age (German).

Elsewhere

ARMEL LE DIVELLEC wonders about the lengthy formation of the **German** government and the comparative uselessness of the meticulous constitutional norms that govern it (French).

PIERRE AURIEL is appalled that in **France** asylum seekers can be detained while determining jurisdiction under the Dublin rules without the Constitutional Council intervening and applying its previous case law (French).

MICHAELA PALESE considers the German *Wahl-O-Mat* to be an exemplary tool for informing voters, from which the **UK** could learn a lot.

ANTONI ABAT I NINET and JOAN QUERALT JIMÉNEZ describe the conflict over the Catalan secessionists in "exile" and their arrest warrants and extradition proceedings, and hope that the expected court decisions from Germany, Belgium, Scotland and Switzerland will lead the **Spanish** government to seek a solution by political rather than criminal means.

ALI DURSUN ULUSOY describes how the constitutional reform in **Turkey** last year undermined the independence of the judiciary.

JANNEKE GERARDS and SARAH LAMPRECHT find the final version of the Copenhagen Declaration on the further development of human rights protection in **Europe** a clear improvement compared to the draft, albeit not without flaws.

Quite independently of that, DANIEL SARMIENTO sees an "April revolution" in **European** human rights protection under way: The 16th Protocol to the Convention of Human Rights enters into force, and with it the possibility for national apex courts to refer questions to Strasbourg. And there is the EU Directive on the presumption of innocence in criminal proceedings, which is, according to Sarmiento, "most far-reaching example of a harmonization of human rights standards in national judicial procedures to date" and a "mini-code of human rights protection in criminal procedural law". The 16th Protocol is also celebrated by DARIO MARTIRE (Italian).

MONICA HAKIMI sees reasons why the allied air strikes in **Syria** could be justified under international law, while MARKO MILANOVIC emphatically does not. VERONIKA FIKFAK and HAYLEY J. HOOPER investigate whether the **British** government should have consulted Parliament first.

LEONID SIROTA writes about the missed chance of the **Canadian** Supreme Court to give the country a kind of *Dassonville* jurisdiction and free it from interprovincial trade restrictions.

SADAF AZIZ reports on the conflict in which the judiciary in **Pakistan** has been involved since the removal of the corrupt ex-premier Navaz Sharif and its possible impact on the summer elections and on the future of democracy in Pakistan in general.

That's it for now. Have a good week, all best and take care!

Max Steinbeis

LICENSED UNDER CC BY NC ND

SUGGESTED CITATION Steinbeis, Maximilian: *The Good Thing about Being German*, *VerfBlog*, 2018/4/21, <https://verfassungsblog.de/the-good-thing-about-being-german/>.